

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3 In the matter of the adoption) **PRESIDING OFFICER**
4 **REPORT**

5 of new rules I through IX and)
6 the repeal of ARM 17.36.901)
7 through 17.36.903 and)
8 17.36.907 through 17.36.910)
9 pertaining to Subsurface)
10 Wastewater Treatment Systems)
11)

12 In the matter of the amendment)
13 of ARM 17.38. 101 and 17.38.106)
14 pertaining to public water and)
15 sewage system requirements)
16)

17 In the matter of the amendment)
18 of ARM 17.36.101, 17.36.310,)
19 17.36.320, 17.36.321, 17.36.325,)
20 17.36.326, 17.36.330, 17.36.332,)
21 17.36.333, 17.36.336, 17.36.340,)
22 17.36.345 pertaining to)
23 definitions, storm drainage,)
24 sewage systems, water supply)
25 systems, non-public water supply)
26 systems, alternate water supply)
27 systems, lot sizes, and adoption)
by reference of DEQ-4)

17 **INTRODUCTION**

18 1. On November 18, I presided over and conducted the
19 public hearing held in Room 111 of the Metcalf Building,
20 1520 East Sixth Avenue, Helena, Montana, to take public
21 comment on the above-captioned matters. Notice of the
22 hearing was contained in 2002 Montana Administrative
23 Register (MAR), Issue No. 19, MAR Notice Numbers 17-176,
24 17-177, and 17-178, published on October 17, 2002. A copy
25 of each notice is attached to this report.
26
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1 2. The hearing began at about 1:30 p.m. and
2 concluded at about 2 p.m. A court reporter, Rosi E.
3 Christensen, recorded the hearing.

4 3. I announced that persons at the hearing would be
5 given an opportunity to submit their data, views, or
6 arguments concerning the proposed action, either orally or
7 in writing.

8 4. At the hearing I identified and summarized the
9 MAR notices, stated that copies of the MAR notices were
10 available in the hearing room, read the Notice of Function
11 of Administrative Rule Review Committee as required by
12 Mont. Code Ann. § 2-4-302(7)(a), informed the persons at
13 the hearing of the rulemaking interested persons list and
14 of the opportunity to have their names placed on that
15 list, recited the authority to make the proposed rule,
16 announced the opportunity to present matters at the
17 hearing or in writing, as stated in the MAR notices, and
18 explained the order of presentation.

19 5. At the conclusion of the hearing I announced that
20 the proposed rulemakings were expected to be considered by
21 the Board at its first regular meeting in 2003.

22 **SUMMARY OF HEARING**

23 6. Theresa Blazicevich, Subdivision Review Section,
24 Water Protection Bureau, DEQ, made an oral statement
25 summarizing the rulemakings in Notice No. 17-176 and 17-
26 178. The Subdivision Review Task Force has spent three
27 years working to incorporate new technology and update

1 rules. The rules also update county minimum standards
2 used to issue septic or wastewater treatment permits. The
3 proposed rules for wastewater permits are consistent with
4 subdivision rules. Because sewage from RV holding tanks
5 can damage drain fields, the rules allow holding tanks for
6 RV dump stations. A recent EPA publication stated that
7 percolation tests may not be as reliable as other tests
8 and the rules make percolation tests optional.

9 7. Jim Melstad, Public Water Supply Section,
10 Permitting and Compliance Division, DEQ, made an oral
11 statement summarizing the rulemaking in Notice No. 17-177.
12 References to circulars are updated and the fees for
13 review of projects under Circular DEQ-4 will be the same
14 whether the systems are reviewed as part of a subdivision
15 or as a separate public wastewater system. Mr. Melstad
16 submitted a written statement that is attached hereto.

17 8. Clete Daily is the owner of Lakeside Resort on
18 Hauser Lake. He made a statement as a proponent of the
19 proposed rule [Notice No. 17-178, ARM 17.36.321] allowing
20 the use of holding tanks for recreational vehicle (RV)
21 dump stations. Mr. Daily explained that his resort is
22 about one and one-half miles from a BLM campground, which
23 has no RV dump station. The nearest dump station is 6-10
24 miles from this BLM campground. The Lewis and Clark
25 Bicentennial Commission is developing a viewing site at
26 Devil's Elbow, which is by the BLM campground. This may
27 further increase the number of visitors to the area and

1 the need for RV's to have a place to dump their wastewater
2 holding tanks. In the absence of a convenient dump
3 station, there could be illegal dumping, which would
4 endanger the water quality of Hauser Lake. Mr. Daily
5 believes the convenience store at his resort would provide
6 a good location for an RV dump station using a holding
7 tank.

8 9. Shawn Bryant is an engineer with Stahly
9 Engineering in Helena. He made a statement as a proponent
10 of the proposed rule [Notice No. 17-178, ARM 17.36.321]
11 allowing the use of holding tanks for recreational vehicle
12 (RV) dump stations. Mr. Bryant explained that a holding
13 tank is often more appropriate than an on-site wastewater
14 treatment system, particularly for locations near bodies
15 of water such as Hauser Lake.

16 Mr. Bryant also made a statement suggesting possible
17 changes to Notice No. 17-176. New Rule II(18) defines
18 "multiple user wastewater system" and New Rule II(30)
19 defines "shared wastewater system." Mr. Bryant suggested
20 combining the definitions. As currently drafted, a person
21 could divide a one-and-one-half-acre parcel into three
22 half-acre parcels, but a person could not divide a one-
23 acre parcel.

24 10. No other person made an oral statement at the
25 hearing.

26 **SUMMARY OF ADDITIONAL WRITTEN MATERIALS**

27 11. After the hearing DEQ submitted written memoranda

1 with HB 521 and HB 311 analyses of each proposed
2 rulemaking, which are attached hereto.

3 12. Four other written comments were received after
4 the hearing and are attached hereto. The period to submit
5 comments ended on November 26, 2002, for Notices 17-177
6 and 17-178, and on November 27, 2002, for Notice 17-176.

7 a. Lake County submitted comments about Circular
8 DEQ-4.

9 b. Lee Griswold of WMW Engineering, PC,
10 submitted comments critical of the fee structure and
11 specific comments about some rules.

12 c. Avis Erb submitted comments about percolation
13 tests, expressing concern about the elimination of
14 such tests and critical of WQB-4, which has three
15 different procedures for such tests, inadequate
16 presoaking time, and omits loam soil from a table.
17 He made suggestions for discharge of water softener
18 water to offset the harmful effects of sodium to soil
19 infiltration. He also commented upon some of the
20 definitions in New Rule II.

21 d. Patrick Faber opposes the amendment to ARM
22 17.36.325 concerning the elimination of mandatory
23 percolation tests. A properly conducted percolation
24 test provides real data to help minimize the
25 incidence of drainfield failure.

26 **PRESIDING OFFICER COMMENTS**

27 13. The Board has jurisdiction to adopt rules for the

1 administration of Water Quality laws (Mont. Code Ann.
2 § 75-5-201), for the treatment of wastes and disposal of
3 sewage (Mont. Code Ann. § 75-5-305), for waters used for
4 public water supplies (Mont. Code Ann. § 75-6-103), and to
5 prescribe fees (Mont. Code Ann. § 75-6-108). DEQ has
6 authority to make rules pertaining to sanitation in
7 subdivisions (Mont. Code Ann. § 76-4-104).

8 14. House Bill 521 (1995) generally provides that the
9 Board may not adopt a rule that is more stringent than
10 comparable federal regulations or guidelines, unless the
11 Board makes written findings after public hearing and
12 comment. The proposed new rules and amendments are not
13 more stringent than a comparable federal regulation or
14 guideline. Therefore written findings are not necessary.

15 15. House Bill 311 (1995), the Private Property
16 Assessment Act, codified as Mont. Code Ann. § 2-10-101
17 through -105, provides that a state agency must complete a
18 review and impact assessment prior to taking an action
19 with taking or damaging implications. The proposed new
20 rules and amendments affect real property. Private
21 Property Assessment Act Checklists were prepared in this
22 matter. The proposed new rules and amendments do not have
23 taking or damaging implications. Therefore, no further
24 HB 311 assessment is necessary.

25 16. The procedures required by the Montana
26 Administrative Procedure Act, including public notice,
27 hearing, and comment, have been followed.

17. The Board may adopt the proposed new rules and amendments (the first and second matters listed in the caption), or reject them, or adopt them with revisions not exceeding the scope of the public notice.

18. The Department of Environmental Quality may adopt the proposed amendments, (the third matter listed in the caption), or reject them, or adopt them with revisions not exceeding the scope of the public notice.

19. Under Mont. Code Ann. § 2-4-305(7), for any acts in the rulemaking process to be valid, the Board/Department must publish a notice of adoption within six months of the date that notice of the proposed rulemaking was published in the Montana Administrative Register, or by April 17, 2003.

Dated this day of December, 2002.

THOMAS G. BOWE
Presiding Officer